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Attorneys for Defendants
Stephen Fairfax and MTechnology

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SWITCH, LTD.,
a Nevada limited liability company,

Plaintiff,

vs.

STEPHEN FAIRFAX; MTECHNOLOGY;
DOES 1 through 10; and ROE ENTITIES 11
through 20, inclusive,

Defendants.

Case No.: 2:17-cv-02651-GMN-VCF

DEFENDANTS' ANSWER TO COMPLAINT

Defendants Stephen Fairfax and MTechnology ("MTech") (collectively, "Defendants") hereby answer the allegations of Plaintiff's Complaint as follows:

NATURE OF THE CASE

Defendants respond to the Nature of the Case as prefatory material to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in this section of the Complaint.

JURISDICTION

1
2 1. Answering Paragraph 1, Defendants contend that it contains a
3 conclusion of law to which no response is required. To the extent that a response
4 is required, Defendants deny the allegations of the Paragraph.

5 2. Answering Paragraph 2, Defendants contend that it contains a
6 conclusion of law to which no response is required. To the extent that a response
7 is required, Defendants deny the allegations of the Paragraph.

8 3. Answering Paragraph 3, Defendants contend that it contains a
9 conclusion of law to which no response is required. To the extent that a response
10 is required, Defendants deny the allegations of the Paragraph.

11 4. Answering Paragraph 4, Defendants contend that it contains a
12 conclusion of law to which no response is required. To the extent that a response
13 is required, Defendants deny the allegations of the Paragraph.

THE PARTIES

14
15 5. Answering Paragraph 5, Defendants are without knowledge or
16 information sufficient for them to admit or deny the allegations of the Paragraph.
17 As such, they deny its allegations.

18 6. Answering Paragraph 6, Defendants are without knowledge or
19 information sufficient for them to admit or deny the allegations of the Paragraph.
20 As such, they deny its allegations.

21 7. Answering Paragraph 7, Defendants are without knowledge or
22 information sufficient for them to admit or deny the allegations of the Paragraph.
23 As such, they deny its allegations.

24 8. Answering Paragraph 8, Defendants are without knowledge or
25 information sufficient for them to admit or deny the allegations of the Paragraph.
26 As such, they deny its allegations.
27

1 9. Answering Paragraph 9, Defendants are without knowledge or
2 information sufficient for them to admit or deny the allegations of the Paragraph.
3 As such, they deny its allegations.

4 10. Answering Paragraph 10, Defendants are without knowledge or
5 information sufficient for them to admit or deny the allegations of the Paragraph.
6 As such, they deny its allegations.

7 11. Answering Paragraph 11, Defendants are without knowledge or
8 information sufficient for them to admit or deny the allegations of the Paragraph.
9 As such, they deny its allegations.

10 12. Answering Paragraph 12, Defendants admit the allegations of the
11 Paragraph.

12 13. Answering Paragraph 13, Defendants admit the allegations of the
13 Paragraph.

14 **ALLEGATIONS COMMON TO ALL CLAIMS**

15 14. Answering Paragraph 14, Defendants repeat and reallege their
16 responses to the preceding paragraphs as if set forth fully herein.

17 15. Answering Paragraph 15, Defendants are without knowledge or
18 information sufficient for them to admit or deny the allegations of the Paragraph.
19 As such, they deny its allegations.

20 16. Answering Paragraph 16, Defendants are without knowledge or
21 information sufficient for them to admit or deny the allegations of the Paragraph.
22 As such, they deny its allegations.

23 17. Answering Paragraph 17, Defendants are without knowledge or
24 information sufficient for them to admit or deny the allegations of the Paragraph.
25 As such, they deny its allegations.

1 18. Answering Paragraph 18, Defendants are without knowledge or
2 information sufficient for them to admit or deny the allegations of the Paragraph.
3 As such, they deny its allegations.

4 19. Answering Paragraph 19, Defendants are without knowledge or
5 information sufficient for them to admit or deny the allegations of the Paragraph.
6 As such, they deny its allegations.

7 20. Answering Paragraph 20, Defendants are without knowledge or
8 information sufficient for them to admit or deny the allegations of the Paragraph.
9 As such, they deny its allegations.

10 21. Answering Paragraph 21, Defendants are without knowledge or
11 information sufficient for them to admit or deny the allegations of the Paragraph.
12 As such, they deny its allegations.

13 22. Answering Paragraph 22, Defendants are without knowledge or
14 information sufficient for them to admit or deny the allegations of the Paragraph.
15 As such, they deny its allegations.

16 23. Answering Paragraph 23, Defendants are without knowledge or
17 information sufficient for them to admit or deny the allegations of the Paragraph.
18 As such, they deny its allegations.

19 24. Answering Paragraph 24, Defendants are without knowledge or
20 information sufficient for them to admit or deny the allegations of the Paragraph.
21 As such, they deny its allegations.

22 25. Answering Paragraph 25, Defendants are without knowledge or
23 information sufficient for them to admit or deny the allegations of the Paragraph.
24 As such, they deny its allegations.

25 26. Answering Paragraph 26, Defendants are without knowledge or
26 information sufficient for them to admit or deny the allegations of the Paragraph.
27 As such, they deny its allegations.

27. Answering Paragraph 27, Defendants are without knowledge or information sufficient for them to admit or deny the allegations of the Paragraph. As such, they deny its allegations.

28. Answering Paragraph 28, Defendants admit that Mr. Fairfax was given a tour of Switch's facility in his capacity as MTech's President. Defendants deny the remaining allegations.

29. Answering Paragraph 29, Defendants deny the allegations of the Paragraph.

30. Answering Paragraph 30, Defendants deny the allegations of the Paragraph.

31. Answering Paragraph 31, Defendants deny that Mr. Fairfax insisted that he be given access to all of Switch's designs. With regard to the remaining allegations, Defendants are without knowledge or information sufficient for them to admit or deny the allegations of the Paragraph. As such, they deny its allegations.

32. Answering Paragraph 32, Defendants deny the allegations of the Paragraph.

33. Answering Paragraph 33, Defendants deny that Mr. Fairfax signed an NDA in his individual capacity. Regarding the remaining allegations, Defendants deny all allegations of the Paragraph inconsistent with the document referenced in the Paragraph.

34. Answering Paragraph 34, Defendants deny the allegations contained therein.

35. Answering Paragraph 35, Defendants are without knowledge or information sufficient for them to admit or deny the allegations of the Paragraph. As such, they deny its allegations.

36. Answering Paragraph 36, Defendants admit that Mr. Fairfax, in his capacity as President of MTech, emailed Switch following the 2011 tour.

37. Answering Paragraph 37, Defendants deny all allegations of the Paragraph inconsistent with the document referenced in the Paragraph.

38. Answering Paragraph 38, Defendants deny all allegations of the Paragraph.

39. Answering Paragraph 39, Defendants deny all allegations of the Paragraph inconsistent with the document referenced in the Paragraph.

40. Answering Paragraph 40, Defendants deny all allegations of the Paragraph.

41. Answering Paragraph 41, Defendants admit the existence of a 2015 Non-Disclosure Agreement between MTech and Switch. Defendants deny the remaining allegations of the Paragraph.

42. Answering Paragraph 42, Defendants deny the allegations of the Paragraph.

43. Answering Paragraph 43, Defendants deny that Mr. Fairfax signed an NDA in his individual capacity. Regarding the remaining allegations, Defendants deny all allegations of the Paragraph inconsistent with the document referenced in the Paragraph.

44. Answering Paragraph 44, Defendants deny that Mr. Fairfax made any assessments in his individual capacity. Regarding the remaining allegations, Defendants are without knowledge or information sufficient for them to admit or deny the allegations of the Paragraph. As such, they deny its allegations.

45. Answering Paragraph 45, Defendants are without knowledge or information sufficient for them to admit or deny the allegations of the Paragraph. As such, they deny its allegations.

46. Answering Paragraph 46, Defendants are without knowledge or information sufficient for them to admit or deny the allegations of the Paragraph. As such, they deny its allegations.

47. Answering Paragraph 47, Defendants are without knowledge or information sufficient for them to admit or deny the allegations of the Paragraph. As such, they deny its allegations.

48. Answering Paragraph 48, Defendants are without knowledge or information sufficient for them to admit or deny the allegations of the Paragraph. As such, they deny its allegations.

49. Answering Paragraph 49, Defendants are without knowledge or information sufficient for them to admit or deny the allegations of the Paragraph. As such, they deny its allegations.

50. Answering Paragraph 50, Defendants deny the allegations of the Paragraph.

51. Answering Paragraph 51, Defendants are without knowledge or information sufficient for them to admit or deny the allegations of the Paragraph. As such, they deny its allegations.

52. Answering Paragraph 52, Defendants are without knowledge or information sufficient for them to admit or deny the allegations of the Paragraph. As such, they deny its allegations.

53. Answering Paragraph 53, Defendants deny the allegations contained in the Paragraph.

54. Answering Paragraph 54, Defendants deny the allegations contained in the Paragraph.

55. Answering Paragraph 55, Defendants deny all allegations in the Paragraph that are inconsistent with the video referenced in the Paragraph.

56. Answering Paragraph 56, Defendants deny the allegations contained in the Paragraph.

57. Answering Paragraph 57, Defendants deny the allegations of the Paragraph.

58. Answering Paragraph 58, Defendants are without knowledge or information sufficient for them to admit or deny the allegations of the Paragraph. As such, they deny its allegations.

59. Answering Paragraph 59, Defendants deny the allegations of the Paragraph.

60. Answering Paragraph 60, Defendants are without knowledge or information sufficient for them to admit or deny the allegations of the Paragraph. As such, they deny its allegations.

61. Answering Paragraph 61, Defendants are without knowledge or information sufficient for them to admit or deny the allegations of the Paragraph. As such, they deny its allegations.

62. Answering Paragraph 62, Defendants admit receipt of correspondence from Switch. Defendants deny the remaining allegations of the Paragraph.

63. Answering Paragraph 63, Defendants deny the allegations of the Paragraph.

64. Answering Paragraph 64, Defendants are without knowledge or information sufficient for them to admit or deny the allegations of the Paragraph. As such, they deny its allegations.

65. Answering Paragraph 65, Defendants deny the allegations of the Paragraph.

FIRST CLAIM FOR RELIEF

(Breach of Contract)

66. Answering Paragraph 66, Defendants repeat and reallege their responses to the preceding paragraphs as if set forth fully herein.

67. Answering Paragraph 67, Defendants deny that Mr. Fairfax signed an NDA in his individual capacity. Defendants deny all remaining allegations in the Paragraph that are inconsistent with the documents referenced in the Paragraph.

68. Answering Paragraph 68, Defendants deny the allegations of the Paragraph.

69. Answering Paragraph 69, Defendants deny the allegations of the Paragraph.

SECOND CLAIM FOR RELIEF

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

70. Answering Paragraph 70, Defendants repeat and reallege their responses to the preceding paragraphs as if set forth fully herein.

71. Answering Paragraph 71, Defendants deny that Mr. Fairfax signed an NDA in his individual capacity. With regard to the remaining allegations, Defendants assert that it contains a conclusion of law to which no response is required. To the extent a response is required, Defendants deny the allegations of the Paragraph.

72. Answering Paragraph 72, Defendants deny that Mr. Fairfax signed an NDA in his individual capacity. Regarding the remaining allegations, Defendants are without knowledge or information sufficient for them to admit or deny the allegations of the Paragraph. As such, they deny its allegations.

73. Answering Paragraph 73, Defendants deny the allegations of the Paragraph.

74. Answering Paragraph 74, Defendants deny the allegations of the Paragraph.

THIRD CLAIM FOR RELIEF

(Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing)

75. Answering Paragraph 75, Defendants repeat and reallege their responses to the preceding paragraphs as if set forth fully herein.

76. Answering Paragraph 76, Defendants deny that Mr. Fairfax signed an NDA in his individual capacity. Regarding the remaining allegations, Defendants assert that it contains a conclusion of law to which no response is required. To the extent a response is required, Defendants deny the allegations of the Paragraph.

77. Answering Paragraph 77, Defendants deny the allegations of the Paragraph.

78. Answering Paragraph 78, Defendants are without knowledge or information sufficient for them to admit or deny the allegations of the Paragraph. As such, they deny its allegations.

79. Answering Paragraph 79, Defendants deny the allegations of the Paragraph.

80. Answering Paragraph 80, Defendants deny the allegations of the Paragraph.

81. Answering Paragraph 81, Defendants deny the allegations of the Paragraph.

82. Answering Paragraph 82, Defendants deny the allegations of the Paragraph.

83. Answering Paragraph 83, Defendants deny the allegations of the Paragraph.

84. Answering Paragraph 84, Defendants deny the allegations of the Paragraph.

85. Answering Paragraph 85, Defendants deny the allegations of the Paragraph.

FOURTH CLAIM FOR RELIEF

(Unjust Enrichment)

86. Answering Paragraph 86, Defendants repeat and reallege the allegations of the preceding paragraphs as if set forth fully herein.

87. Answering Paragraph 87, this claim was dismissed with prejudice, and no response is required.

88. Answering Paragraph 88, this claim was dismissed with prejudice, and no response is required.

89. Answering Paragraph 89, this claim was dismissed with prejudice, and no response is required.

90. Answering Paragraph 90, this claim was dismissed with prejudice, and no response is required.

91. Answering Paragraph 91, this claim was dismissed with prejudice, and no response is required.

92. Answering Paragraph 92, this claim was dismissed with prejudice, and no response is required.

FIFTH CLAIM FOR RELIEF

(Conversion)

93. Answering Paragraph 93, Defendants repeat and reallege their responses to the preceding paragraphs as if set forth fully herein.

94. Answering Paragraph 94, this claim was dismissed with prejudice, and no response is required.

95. Answering Paragraph 95, this claim was dismissed with prejudice, and no response is required.

96. Answering Paragraph 96, this claim was dismissed with prejudice, and no response is required.

97. Answering Paragraph 97, this claim was dismissed with prejudice, and no response is required.

98. Answering Paragraph 98, this claim was dismissed with prejudice, and no response is required.

SIXTH CLAIM FOR RELIEF

(Misappropriation of Trade Secrets – 18 U.S.C. § 1836, et al.)

99. Answering Paragraph 99, Defendants repeat and reallege the allegations of the preceding paragraphs as if set forth fully herein.

100. Answering Paragraph 100, Defendants deny all allegations in the Paragraph inconsistent with the documents referenced in the Paragraph.

101. Answering Paragraph 101, Defendants deny the allegations of the Paragraph.

102. Answering Paragraph 102, Defendants deny the allegations of the Paragraph.

103. Answering Paragraph 103, Defendants deny the allegations of the Paragraph.

104. Answering Paragraph 104, Defendants deny the allegations of the Paragraph.

105. Answering Paragraph 105, Defendants deny the allegations of the Paragraph.

106. Answering Paragraph 106, Defendants deny the allegations of the Paragraph.

107. Answering Paragraph 107, Defendants deny the allegations of the Paragraph.

1 108. Answering Paragraph 108, Defendants deny the allegations of the
2 Paragraph.

3 **SEVENTH CLAIM FOR RELIEF**

4 **(Misappropriation of Trade Secrets – NRS 600A)**

5 109. Answering Paragraph 109, Defendants repeat and reallege their
6 responses to the preceding paragraphs as if set forth fully herein.

7 110. Answering Paragraph 110, Defendants assert that it contains a
8 conclusion of law to which no response is required. To the extent a response is
9 required, Defendants deny the allegations of the Paragraph.

10 111. Answering Paragraph 111, Defendants deny the allegations of the
11 Paragraph.

12 112. Answering Paragraph 112, Defendants deny the allegations of the
13 Paragraph.

14 **EIGHTH CLAIM FOR RELIEF**

15 **(Misappropriation of Licensable Commercial Properties)**

16 113. Answering Paragraph 113, Defendants repeat and reallege their
17 responses to the preceding paragraphs as if set forth fully herein.

18 114. Answering Paragraph 114, this claim was dismissed with prejudice,
19 and no response is required.

20 115. Answering Paragraph 115, this claim was dismissed with prejudice,
21 and no response is required.

22 116. Answering Paragraph 116, this claim was dismissed with prejudice,
23 and no response is required.

24 117. Answering Paragraph 117, this claim was dismissed with prejudice,
25 and no response is required.

26 118. Answering Paragraph 118, this claim was dismissed with prejudice,
27 and no response is required.

1 119. Answering Paragraph 119, this claim was dismissed with prejudice,
2 and no response is required.

3 120. Answering Paragraph 120, this claim was dismissed with prejudice,
4 and no response is required.

5 **AFFIRMATIVE DEFENSES**

6 **First Affirmative Defense**

7 Switch has failed to state any claims for relief upon which relief may be
8 granted.

9 **Second Affirmative Defense**

10 Switch's Claims for Relief are barred as they seek relief for alleged
11 misappropriation of trade secrets on patented material.

12 **Third Affirmative Defense**

13 Switch's Claims for Relief are barred for its failure to join one or more
14 indispensable parties to this litigation.

15 **Fourth Affirmative Defense**

16 Switch's Claims for Relief are barred by the doctrine of estoppel.

17 **Fifth Affirmative Defense**

18 Switch's Claims for Relief are barred by the doctrine of laches.

19 **Sixth Affirmative Defense**

20 Switch's Claims for Relief are barred by the doctrine of waiver.

21 **Seventh Affirmative Defense**

22 Switch's Claims for Relief are barred as they suffered no injury or damage
23 as a proximate result of the allegations in them.

24 **Eighth Affirmative Defense**

25 As to those Paragraphs wherein Defendants denied the allegations of the
26 Complaint, Defendants are informed and believe and thereon allege that Plaintiff
27 was not damaged in the sum or sums alleged, or other sum or sums whatsoever.

Ninth Affirmative Defense

Plaintiff's Claims for Relief that sound in contract are barred as to Stephen Fairfax because he is not a party to any of the contracts referenced in the Complaint.

Tenth Affirmative Defense

Stephen Fairfax acted in his capacity as President of MTech, and not in his individual capacity, in all dealings with Plaintiff Switch and is not personally liable to Switch in any way.

Eleventh Affirmative Defense

MTech fully performed under the terms of the contracts at issue in the Complaint and is not liable to Plaintiff for failure to perform according to the terms of those contracts.

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PRAYER FOR RELIEF

WHEREFORE, Defendants pray that the Court enter judgment as follows:

A. Entering judgment for Defendants on all claims made against them in the Complaint, and ordering that Plaintiff is entitled to no relief whatsoever with regard to the Complaint;

B. Entering an Order directing that Plaintiff pay Defendants' attorneys' fees and costs pursuant to any applicable law; and

C. Grant Defendants such other and further relief as the Court may deem just.

Dated: May 28, 2019.

Respectfully submitted,

/s/ Ronald D. Green

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Ronald D. Green (NV Bar No. 7360)
Alex J. Shepard (NV Bar No. 13582)
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*Attorneys for Defendants
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Case No. 2:17-cv-02651-GMN-VCF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 28, 2019, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I further certify that a true and correct copy of the foregoing document is being served via transmission of Notices of Electronic Filing generated by CM/ECF.

Respectfully Submitted,

/s/ Ronald D. Green

Ronald D. Green

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